2238.

SUPREME COURT OF THE UNITED STATES.

No. 182.

THOMAS TOWNSEND, PLAINTIFF IN ERROR,

vs.

ROBERT JEMISON, JUNIOR.

IN ERROR TO THE DISTRICT COURT UNITED STATES FOR THE MIDDLE DISTRICT OF ALABAMA.

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J. & G. S. Gideon, printers.

The United States of America, to Robert Jemison, jun'r, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the district court of the United States for the middle district of Alabama, wherein Thomas Townsend is plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Hon. William Crawford, judge of the said district court of the United States for the said middle district of Alabama, this 9th day of July, in the year of our Lord one thousand eight hundred and forty-seven. WM. CRAWFORD, *Judge*.

THE STATE OF ALABAMA, *Tuskaloosa county:*

Personally came before me, James M. Van Hoose, to me well known, who, being by me duly sworn, saith, that he served the above notice on Robert Jemison, jun'r, the defendant in error in said notice named, on the 13th day of September last past, by giving him a copy thereof, and reading to him the original, that is, the above, signed by Wm. Crawford, judge; and further deponent saith not.

JAMES M. VAN HOOSE.

Sworn to and subscribed before me, this 5th day of October, A. D. 1847. H. W. COLLIER,

Chief justice supreme court of Alabama.

United States of America, district court of the United States for the middle district of Alabama:

THOMAS TOWNSEND vs. ROBERT JEMISON, jun. } In error.

Be it remembered, that on the thirtieth day of July, in the year of our Lord one thousand eight hundred and forty-seven, were filed in the clerk's office of the district court aforesaid a petition and writ of error, with a bond for the prosecution of said writ; which said petition, writ, and bond, are in the words and figures following, to wit:

Petition for writ of error.

District court of the United States for the middle district of Alabama:

ROBERT JEMISON, jun., vs. THOMAS TOWNSEND.

To the Hon. William Crawford, judge of the district court of the United States for the middle district of Alabama:

The petition of Thomas Townsend, the defendant in the above en-

titled cause, respectfully showeth unto your honor that, at the fall term of said court, in the year 1846, a judgment was *was* rendered in an action of trespass on the case upon promises in favor of the above named Robert Jemison, jun., plaintiff, against your petitioner, for the sum of four thousand six hundred and forty-five dollars damages, besides costs of suit. Your petitioner further sheweth that he is advised by counsel, and verily believes, the same to be true; that as well in the record and proceedings in said suit, as in the said judgment, there is manifest error, and, to the end that such error may be corrected, your petitioner prays your honor to grant to him a writ of error in the said case, returnable to the next term of the Supreme Court of the United States.

And your petitioner, as in duty bound, will ever pray, &c.

THOMAS TOWNSEND,
By E. W. PECK, *His attorney*.

June 25th, 1847.

"Let a writ of error issue, agreeably to the prayer of the petitioner. July 9th, 1847.

WM. CRAWFORD, *Judge*."

Writ of error.

UNITED STATES OF AMERICA:

The President of the United States, to the judge of the district court of the United States for the middle district of Alabama, greeting:

Because in the record and proceedings, and also in the rendition of judgment of a plea, which is in the said district court before you, between Robert Jemison, jun., plaintiff, and Thomas Townsend, defendant, a manifest error hath happened, to the great damage of the said Thomas Townsend, as by his complaint appears; and it being fit that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the place of holding the said Supreme Court, in the city of Washington, on the first Monday of November next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause to be done therein, to correct that error, what of right, and according to the law and custom of the United States, should be done.

Witness the Hon. Roger B. Taney, chief justice of the said Supreme Court of the United States, this ninth day of July, in the year of our Lord one thousand eight hundred and forty-seven. Issued the 9th day of July, A. D. 1847.

[L. S.] Attest: A. G. GOOCH,
Clerk D. C. Mid. Dist. Ala.

(*Bond for writ of error.*)

SUPREME COURT OF THE UNITED STATES

THOMAS TOWNSEND
vs.
ROBERT JEMISON, jun. } In error.

Know all men by these presents, that we, Thomas Townsend and Willis Banks, are held and firmly bound unto Robert Jemison, jun., in the sum of five hundred dollars, to be paid to the said Robert Jemison, jun., his heirs, executors, or administrators. To which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this twenty fifth day of June, A. D. 1847.

Whereas the above bound Thomas Townsend hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in favor of the above named Robert Jemison, jun., in the above mentioned suit, by the district court of the United States for the middle district of Alabama: Now, therefore, the condition of this obligation is such, that if the above named Thomas Townsend shall prosecute his said writ of error to effect, and answer all costs if he shall fail to make good his plea, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

THOMAS TOWNSEND, [SEAL.]
By E. W. PECK, *his attorney*.
WILLIS BANKS. [SEAL.]

Signed, sealed, and delivered in the presence of—
A. G. GOOCH.

I approve the within bond this 9th of July, 1847.
WM. CRAWFORD, *Judge*.

☞ (The execution of the foregoing writ of error appears from the transcript of the record of the said cause hereto attached.)

Pleas before the honorable the district court of the United States for the middle district of Alabama, at a term thereof begun and held at Tuscaloosa, on the first Monday after the fourth Monday of November, in the year of our Lord one thousand eight hundred and forty-six.

The honorable William Crawford, judge of said district court, presiding.

ROBERT JEMISON, jun.,
vs.
THOMAS TOWNSEND. }

Be it remembered, that heretofore, to wit, on the twenty-sixth day of September, in the year of our Lord one thousand eight hundred and forty-four, there was issued from the clerk's office of said district court a writ of capias ad respondendum, which, with the marshal's return thereon is in the words and figures following, to wit:

United States of America, district court of the United States for the middle district of Alabama.

The President of the United States to the marshal of said district, greeting:

You are hereby commanded to take the body of Thomas Townsend, who is a citizen of the State of Mississippi, and him safely keep, so that you have him before the honorable the judge of the said court, at the place of holding said court at Tuscaloosa, on the first Monday after the fourth Monday of November next, to answer to Robert Jemison, junior, who is a citizen of the State of Alabama. in a plea of trespass on the case upon promises, to the plaintiff's damage ten thousand dollars. Herein fail not, and have you then and there this writ.

Witness the honorable William Crawford, judge of the said court, this fourth Monday of May, in the year of our Lord one thousand eight hundred and forty-four.

Issued the twenty-sixth day of September, in the year of our Lord one thousand eight hundred and forty-four.

[SEAL.] Attest: A. G. GOOCH,
Clerk D. C., middle district of Alabama.

This action is brought to recover damages for the non-performance of an agreement made by the defendant with the plaintiff, that if the plaintiff would procure, take up, and obtain a note, made by Robert Weir, A. F. Young, and the said defendant, and Henry Buchanan, for $4,000, dated Columbus, April 12th, 1839, payable nine months after the 24th April, 1839, to the Mississippi Union Bank at their banking-house in Jackson, bearing ten per cent. interest after maturity, if not punctually paid, but upon which note the said A. F. Young was to pay the said bank one thousand dollars; and would also procure, take up, and obtain a note, made by the said defendant, and A. F. Young, Andrew Weir, and Henry Buchanan, dated Columbus, April 12, 1839, for $4,000, payable at nine months after the 24th of April, 1839, to the Mississippi Union Bank, at their banking-house in Jackson, to bear ten per cent. interest after maturity, if not punctually paid, but upon which note A. F. Young was to pay $1,000; that he, the defendant, would take up, procure, and obtain a note, made by John B. Jones, Thomas Townsend, (the said defendant,) Eli Abbott, and Samuel D. Lauderdale, dated Columbus, Mississippi, May 24th, 1839, for $9,806 50, payable six months after date to the Commercial Bank of Columbus, or order at their bank; which agreement the defendant wholly failed to perform, although the plaintiff, upon his part, fully performed the said agreement. Other counts will be added in the declaration.

Attest: CRABB & COCHRAN,
Plaintiff's attorneys.

Received and executed 26th September, 1844.
WM. ARMISTEAD, *U. S. marshal.*
By J. A. BEAL, *D. M.*

(*Bond for writ of error.*)

SUPREME COURT OF THE UNITED STATES

THOMAS TOWNSEND
vs.
ROBERT JEMISON, jun. } In error.

Know all men by these presents, that we, Thomas Townsend and Willis Banks, are held and firmly bound unto Robert Jemison, jun., in the sum of five hundred dollars, to be paid to the said Robert Jemison, jun., his heirs, executors, or administrators. To which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this twenty fifth day of June, A. D. 1847.

Whereas the above bound Thomas Townsend hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in favor of the above named Robert Jemison, jun., in the above mentioned suit, by the district court of the United States for the middle district of Alabama: Now, therefore, the condition of this obligation is such, that if the above named Thomas Townsend shall prosecute his said writ of error to effect, and answer all costs if he shall fail to make good his plea, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

THOMAS TOWNSEND, [SEAL.]
By E. W. PECK, *his attorney*.
WILLIS BANKS. [SEAL.]

Signed, sealed, and delivered in the presence of—
A. G. GOOCH.

I approve the within bond this 9th of July, 1847.
WM. CRAWFORD, *Judge*.

☞ (The execution of the foregoing writ of error appears from the transcript of the record of the said cause hereto attached.)

Pleas before the honorable the district court of the United States for the middle district of Alabama, at a term thereof begun and held at Tuscaloosa, on the first Monday after the fourth Monday of November, in the year of our Lord one thousand eight hundred and forty-six.

The honorable William Crawford, judge of said district court, presiding.

ROBERT JEMISON, jun.,
vs.
THOMAS TOWNSEND. }

Be it remembered, that heretofore, to wit, on the twenty-sixth day of September, in the year of our Lord one thousand eight hundred and forty-four, there was issued from the clerk's office of said district court a writ of capias ad respondendum, which, with the marshal's return thereon is in the words and figures following, to wit:

United States of America, district court of the United States for the middle district of Alabama.

The President of the United States to the marshal of said district, greeting:

You are hereby commanded to take the body of Thomas Townsend, who is a citizen of the State of Mississippi, and him safely keep, so that you have him before the honorable the judge of the said court, at the place of holding said court at Tuscaloosa, on the first Monday after the fourth Monday of November next, to answer to Robert Jemison, junior, who is a citizen of the State of Alabama. in a plea of trespass on the case upon promises, to the plaintiff's damage ten thousand dollars. Herein fail not, and have you then and there this writ.

Witness the honorable William Crawford, judge of the said court, this fourth Monday of May, in the year of our Lord one thousand eight hundred and forty-four.

Issued the twenty-sixth day of September, in the year of our Lord one thousand eight hundred and forty-four.

[SEAL.] Attest: A. G. GOOCH,
Clerk D. C., middle district of Alabama.

This action is brought to recover damages for the non-performance of an agreement made by the defendant with the plaintiff, that if the plaintiff would procure, take up, and obtain a note, made by Robert Weir, A. F. Young, and the said defendant, and Henry Buchanan, for $4,000, dated Columbus, April 12th, 1839, payable nine months after the 24th April, 1839, to the Mississippi Union Bank at their banking-house in Jackson, bearing ten per cent. interest after maturity, if not punctually paid, but upon which note the said A. F. Young was to pay the said bank one thousand dollars; and would also procure, take up, and obtain a note, made by the said defendant, and A. F. Young, Andrew Weir, and Henry Buchanan, dated Columbus, April 12, 1839, for $4,000, payable at nine months after the 24th of April, 1839, to the Mississippi Union Bank, at their banking-house in Jackson, to bear ten per cent. interest after maturity, if not punctually paid, but upon which note A. F. Young was to pay $1,000; that he, the defendant, would take up, procure, and obtain a note, made by John B. Jones, Thomas Townsend, (the said defendant,) Eli Abbott, and Samuel D. Lauderdale, dated Columbus, Mississippi, May 24th, 1839, for $9,806 50, payable six months after date to the Commercial Bank of Columbus, or order at their bank; which agreement the defendant wholly failed to perform, although the plaintiff, upon his part, fully performed the said agreement. Other counts will be added in the declaration.

Attest: CRABB & COCHRAN,
Plaintiff's attorneys.

Received and executed 26th September, 1844.
WM. ARMISTEAD, *U. S. marshal.*
By J. A. BEAL, *D. M.*

And afterwards, to wit, at a term of said district court begun and held on the first Monday after the fourth Monday in November, in the year of our Lord one thousand eight hundred and forty-four, the plaintiff herein filed his declaration in words and figures as follows, to wit:

United States of America, district court of the United States for the middle district of Alabama, fall term, 1844.

MIDDLE DISTRICT, *to wit:*

Robert Jemison, jr., who is a citizen of the State of Alabama, complains of Thomas Townsend, who is a citizen of the State of Mississippi, defendant, in custody, &c., of a plea of trespass on the case on promises, &c.

For that whereas, at the day and year, and at the place therein mentioned, to wit, in the district aforesaid, the said defendant, and A. F. Young, Andrew Weir, and Henry Buchanan, who are not sued in this action, made and delivered to the Mississippi Union Bank a corporation and body politic, incorporated by and under the laws of the State of Mississippi, their two several promissory notes of the following purport, to wit:

Dis. $4,000. COLUMBUS, *April 12th*, 1839.

Nine months after the 24th day of April, 1839, we, or either of us, jointly and severally, promise to pay to the Mississippi Union Bank four thousand dollars for value received, negotiable and payable at their banking-house in Jackson, to bear ten per cent. interest per annum after maturity, if not punctually paid. Credit first drawer.

ROBERT WEIR,
A. F. YOUNG,
THOS. TOWNSEND.
HENRY BUCHANAN.

Dis. $4,000 COLUMBUS, *April 12th*, 1839.

Nine months after the 24th day of April, 1839, we, or either of us, jointly and severally, promise to pay to the Mississippi Union Bank four thousand dollars for value received, negotiable and payable at their banking-house in Jackson, to bear ten per cent. interest per annum after maturity, if not punctually paid. Credit first drawer.

THOMAS TOWNSEND,
A. F. YOUNG,
ANDREW WEIR,
HENRY BUCHANAN.

And the plaintiff avers, that by the laws regulating the said the Mississippi Union Bank, and which is the law of the place where the said notes respectively were made, it was lawful to stipulate, as in the said notes respectively, for the payment of interest at the rate of ten per cent. per annum, if the said notes respectively were not punctually paid at the maturity thereof.

And whereas, also, one John B. Jones, and the said defendant,

Thomas Townsend, and Eli Abbott, and Samuel D. Lauderdale, being the sureties of the said John B. Jones, at the day and year, and at the place therein mentioned, to wit, in the district aforesaid, had made and delivered to the Commercial Bank of Columbus, Mississippi, (a corporation and body politic, incorporated by and under the laws of the State of Mississippi,) their certain promissory note of the following purport, to wit:

$9806.50.

COLUMBUS, MISS., *May 24th*, 1839.

Six months after date, we, or either of us, promise to pay to the Commercial Bank of Columbus, Mississippi, or order, at their banking-house in Columbus, nine thousand eight hundred and six $\frac{50}{100}$ dollars, for value received.

Credit first drawer.

JOHN B. JONES,
THOMAS TOWNSEND,
ELI ABBOTT,
SAMUEL D. LAUDERDALE.

Which said last mentioned note the said plaintiff, for a valuable consideration had afterwards, to wit, on the day and year, and at the place last aforesaid, to wit, in the district aforesaid, agreed to and with the said Jones, to pay off, take up, satisfy, and discharge, as of his own debt.

And the said defendant being so liable as aforesaid upon the said two several promissory notes first aforesaid to the Union Bank aforesaid, and the said plaintiff being bound as aforesaid to take up and pay off the said note of the said Jones and others to the Commercial Bank aforesaid, and hereinbefore set forth, afterwards, to wit, on the day and year, and at the place last aforesaid, proposed to, and the said defendant and the said Jemison agreed to and with each other, that in consideration that the said plaintiff would take up and satisfy to the branch of the said Union Bank of Mississippi, at Macon, (which branch then held and owned the said two notes made by the said defendant and others as aforesaid,) three-fourths of the amount due on each of the said two promissory notes made by the said defendant and others to the said Union Bank, (reserving to A. F. Young, one of the makers of each of the said two notes to the Union Bank aforesaid the right of paying to the said Union Bank one fourth of each of the said notes), that in consideration thereof, he, the said defendant, would take up, pay, and discharge upon the said note of the said Jones and others to the Commercial Bank aforesaid a like amount.

And the plaintiff avers, that in consideration of such promise and agreement by the defendant, and in pursuance thereof, he did afterwards, to wit, on &c., at &c., pay to the branch of the Union Bank aforesaid, in payment for the said two notes made by the defendant and others to the Union Bank aforesaid, a large sum of money, to wit, the sum of 10,000 dollars.

And the plaintiff avers, that the said defendant wholly disregarded

his promise, agreement, and undertaking in that respect, and did not pay to the said the Commercial Bank aforesaid upon the said note of the said Jones aforesaid a like amount, or any other amount whatever, although thereto frequently requested, to wit, on the day and year, and at the place last aforesaid.

And the plaintiff avers, that by reason of the aforesaid neglect and refusal of the said defendant to comply with and perform his aforesaid promise and agreement, in that neglect, he, the said plaintiff, was compelled, and did pay to the said Commercial Bank, in satisfaction of the said note made by the said Jones and others aforesaid, a large sum of money, to wit, the sum of 10,000 dollars; and by means of the premises the said defendant is liable to pay to the said plaintiff the said sum of 10,000 dollars.

And whereas the said defendant afterwards, to wit, on the 20th day of September, in the year 1844, at the district aforesaid, was indebted to the said plaintiff in the further sum of 10,000 dollars, for so much money by the said plaintiff before that time lent and advanced to, and paid, laid out, and expended for the said defendant, and at his special instance and request.

And also in the further sum of 10,000 dollars, for other money by the said defendant before that time had and received to and for the use of the said plaintiff. And also in the further sum of 10,000 dollars money found to be due to the plaintiff from the defendant upon an account then and there stated between them. And being so indebted, the defendant, in consideration thereof, afterwards, to wit, on the day and year, and at the place last aforesaid, undertook, and then and there faithfully promised the said plaintiff, to pay to him the said several sums of money in this count mentioned, when the said defendant should be thereto afterwards requested.

Yet the said defendant, not regarding his said promises, but contriving, &c., has not yet paid the said several sums of money, or either of them, in said counts specified, to the said plaintiff, (although often requested so to do); but to pay the same, or either of them, the said defendant has hitherto wholly neglected and refused, and still neglects and refuses, to the damage of the said plaintiff of 10,000 dollars. And therefore suit, &c.

WM. COCHRAN,
Attorney for plaintiff.

And afterwards, to wit, at the term of said court last aforesaid, begun and held on the first Monday after the fourth Monday in November, in the year of our Lord one thousand eight hundred and forty-four, the said defendant, by his attorneys, filed his pleas herein, which are in the words and figures following, to wit:

District court of the United States, for the middle district of Alabama.

ROBERT JEMISON, Jun., vs. THOMAS TOWNSEND. } Fall term, 1844.

1. And the said defendant, by Peck & Clark, his attorneys, comes and defends the wrong and injury, when, &c., and says, actio non, be-

cause he saith that on the first day of January, in the year 1839, he was, and from thence hitherto hath been, and still is, a resident and citizen of the State of Mississippi, and not elsewhere.

And the said defendant further saith, that the said supposed promise in the first count of the plaintiff's declaration, alleged to have been made by the said defendant to the said plaintiff, was an unwritten promise made by the said defendant, in the said State of Mississippi, (and to be there performed, and not elsewhere,) more than three years next before the commencement of the suit in this behalf.

And the said defendant further saith, that by the statute of limitations of the said State of Mississippi, at the time of the making of the said supposed promise, then and still in force in said State, all right of action is barred, after the period of three years, upon the said supposed promise in the said plaintiff's declaration alleged; and this said defendant is ready to verify. Wherefore, he prays judgment, if the plaintiff his aforesaid action ought to have or maintain, &c.

2. And for a further plea in this behalf, said defendant, by leave, &c., says actio non, because he saith that on the first day of January, 1839, he was, and from thence hitherto hath been, and still is, a resident and citizen of the State of Mississippi, and not elsewhere.

And the said defendant further saith, that the said supposed promise in the said first count of the said plaintiff's declaration, alleged to have been made by the said defendant to the said plaintiff, was an unwritten promise made by the said defendant in the said State of Mississippi, and not elsewhere, and that the same was there to be performed.

And the said defendant further saith, that the said supposed promise was made more than three years next before the commencement of this suit; and that the cause of action upon the said supposed promise accrued in the said State of Mississippi, and not elsewhere, more than three years next before the commencement of this suit, and not after.

And the said defendant further saith, that by the statutes of limitations of the said State of Mississippi, at the time of the making of the said supposed promise, and still in force, the cause of action upon the said supposed promise was barred after the lapse of three years next after the same accrued; and this said defendant is ready to verify. Wherefore, he prays judgment, if said plaintiff his aforesaid action, &c., ought to have or maintain, &c.

3. And for a further plea in this behalf, said defendant, by leave, &c., says actio non, because he saith that, on the first day of January, 1839, he was, and from thence hitherto hath been, and still is, a resident and citizen of the State of Mississippi, and not elsewhere.

And said defendant further saith, that the said several supposed promises in the plaintiff's declaration mentioned and alleged to have been made by said defendant to the said plaintiff, are all and each of them parol promises made by the said defendant in the State of Mississippi, more than three years next before the commencement of the suit in this behalf, and were to be there performed, and not elsewhere.

And the said defendant further saith, that the said several supposed

causes of action in the said declaration alleged to have accrued to the said plaintiff, by reason of the said supposed promises, or any one or either of them, did not, nor did any or either of them, accrue to the said plaintiff at any time within three years next before the commencemant of the suit in this behalf, in manner and form as the said plaintiff hath above thereof against him complained; and this said defendant is ready to verify. Wherefore, he prays judgment, &c., if said plaintiff his aforesaid action thereof against him ought to have or maintain, &c.

4. And, for a further plea in this behalf, the said defendant, by leave, &c., says actio non, because he says as to so much of the said supposed promise in the first count of the plaintiff's declaration mentioned as refers to an undertaking of the said defendant to pay three thousand dollars, or any other part or parcel of the said note made by John B. Jones, Thomas Townsend, Eli Abbott and Samuel D. Lauderdale, and set out at large in said count in consideration that the said plaintiff would pay three thousand dollars, or any other part or parcel of the note made by Robert Weir, A. F. Young, Thomas Townsend, and Henry Buchanan, and set out at large in said count, said defendant says, he did not undertake and promise in this behalf, as the said plaintiff hath thereof complained against him; and of this he puts himself upon the country.

And said defendant, as to the residue of said supposed promise or undertaking in said count, which refers to the undertaking of the said defendant to pay three thousand dollars, or any other part or parcel of the said note made by the said John B. Jones, Thomas Townsend, Eli Abbott, and Samuel D. Lauderdale, in consideration that the said plaintiff would pay three thousand dollars, or any other part or parcel of the note made by Thomas Townsend, A. F. Young, Andrew Weir, and Henry Buchanan, and set out at large in said count, said defendant says, actio non, because he says that the said plaintiff heretofore, to wit, on the first Monday in June, in the year 1842, in the district court of the United States, for the northern district of Mississippi, held in the town of Pontotoc, in said district, before the Hon. Samuel J. Gholson, judge of said court, impleaded the said defendant in a certain plea of trespass on the case in assumpsit, to the damage of the said plaintiff of ten thousand dollars, for not performing the very same promise and undertaking in the said first count of the said declaration in this behalf mentioned; and such proceedings were thereupon had in said court in that plea, that afterwards, to wit, at the December term of said court, in the year 1842, the said plaintiff, by the consideration and judgment of said court, recovered in the said plea against the said defendant the sum of three thousand four hundred and fifty-one dollars and eighty-eight cents, for his damages which he had sustained on occasion of the not performing of the same identical promise and undertaking in the said declaration in this behalf mentioned, and also his costs in that behalf expended, whereof the said defendant was convicted, as by the record and proceedings thereof still remaining in said court more fully and at large

appears; which said judgment still remains in full force and effect, not in the least reversed or made void, and which said judgment heretofore, to wit, on the 10th day of June, 1843, was fully paid and satisfied by the said defendant; and this said defendant is ready to verify, &c. Wherefore defendant prays judgment if the said plaintiff ought to have or maintain his aforesaid action in this behalf against him, &c.

5. And, for a further plea in this behalf, said defendant, by leave, &c., says actio non, because he saith that he did not undertake and promise, in manner and form as the plaintiff hath above in his said declaration complained against him; and of this he puts himself upon the country, &c.,

PECK & CLARK, *Atty's, &c., for def't.*

And afterwards, to wit, at the term of said court, begun and holden on the fourth Monday in May, in the year of our Lord one thousand eight hundred and forty-five, the plaintiff, by his attorney, filed herein his replications, which are in the following words and figures, to wit:

ROBERT JAMESON, jun.,
vs.
THOMAS TOWNSEND. } May term, 1845.

And the said plaintiff, as to the first, second, and third pleas of the said defendant by him above pleaded, saith, that the same and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar or preclude him, the said plaintiff, from having or maintaining his aforesaid action thereof against the said defendant, and that he, the said plaintiff, is not bound by law to answer the same; and this the said plaintiff is ready to verify. Wherefore by reason of the insufficiency of the said plea in this behalf the plaintiff prays judgment, and his damages by reason of the not performing of the said several promises in said declaration mentioned, to be adjudged, &c.

And the said plaintiff, as to the fifth plea of the said defendant by him above pleaded, and whereof he has put himself upon the country, doth the like.

And the said plaintiff, as to so much of the said plea fourthly above pleaded by the defendant, whereof the defendant hath put himself upon the country, doth the like.

And, as to the residue of said fourth plea, the said plaintiff says precludi non, because he says there is not any such record of a judgment aforesaid recovered, as said defendant hath in his said plea alleged. And this the plaintiff is ready to verify; wherefore he prays judgment, &c.

JAMES B. WALLACE,
Attorney for plaintiff.

And afterwards, to wit, at the term of said court last aforesaid, begun and held on the fourth Monday of May, in the year of our Lord one thousand eight hundred and forty-five, an order was had in this cause in the words following, to wit:

ROBERT JEMISON, JUN.,
vs.
THOMAS TOWNSEND.

This day came the parties, by their attorneys, and on motion of defendant, it is ordered that he have leave to amend his pleas, and that this cause be continued.

And afterwards, to wit, at the term of said court, by law required to be holden on the first Monday after the fourth Monday of November, in the year of our Lord one thousand eight hundred and forty-five, the honorable William Crawford, judge of said court, failing to attend, this cause was continued by virtue of the act of Congress in such case made and provided.

And afterwards, to wit, at a term of said court begun and held on the fourth Monday of May, in the year of our Lord one thousand eight hundred and forty-six, an order was had herein in the following words, to wit:

ROBERT JEMISON, JUN.,
vs.
THOMAS TOWNSEND.

On motion of the plaintiff, by his attorney, it is ordered that this cause be continued.

And now at this day, to wit, on the seventh day of December, in the year of our Lord one thousand eight hundred and forty six, being a day of the term of said court, begun and held on the first Monday after the fourth Monday of November, in the year of our Lord one thousand eight hundred and forty-six, first aforesaid, proceedings were had in this cause as follows, to wit:

ROBERT JEMISON, JUN.,
vs.
THOMAS TOWNSEND.

This day came said parties, by their attorneys, and the demurrer to the three first pleas of the said defendant, by him above pleaded, coming on to be heard, and having been fully argued by counsel, and understood by the court, it is adjudged by the court that the said three first pleas by the defendant above pleaded, and the matters therein alleged, are insufficient in law to bar the said plaintiff from having or maintaining his said action against said defendant; and the court doth accordingly sustain the said demurrer. And as to so much of the said fourth plea by the said defendant, by him above pleaded as alleged, a former recovery of three thousand four hundred and fifty-one dollars and eighty-eight cents, in the district court of the United States for the northern district of Mississippi, on account of the undertaking of the said defendant "to pay three thousand dollars, or any other part or parcel of the said note, made by the said John B. Jones, Thomas Townsend, Eli Abbott, and Samuel D. Lauderdale, in consideration that the said plaintiff would pay three thousand dollars, or any other part or

parcel of the note made by Thomas Townsend, A. F. Young, Andrew Weir, and Henry Buchanan," and set out at large in said count, on which issue was joined to the court, the record therein referred to being seen and inspected by the court, and the same being fully considered, the court adjudged that there is such a record as alleged in said plea of a recovery, on the promise of the said Thomas Townsend to pay on the note of the said John B. Jones, Thomas Townsend, Eli Abbots, and Samuel D. Lauderdale, as mentioned in said plea, the like amount that should be paid by plaintiff on the note of the said Thomas Townsend, A. F. Young, Andrew Weir, and Henry Buchanan. And as to the residue of said fourth plea and the fifth plea, upon which issue was taken to the country, thereupon came a jury of good and lawful men, to wit, Amos Briggs, and eleven others, who being empannelled, tried, and sworn the truth to say upon the issues joined, upon their oaths do say, they find the issues in favor of the plaintiff, and assess his damages to four thousand six hundred and forty-five dollars. It is therefore considered by the court, that the plaintiff recover of said defendant said sum of four thousand six hundred and forty-five dollars, the damages by the jury assessed as aforesaid, in manner and form aforesaid, together with the costs in this behalf expended.

UNITED STATES OF AMERICA,
Middle district of Alabama:

I, Albert G. Gooch, clerk of the district court of the United States for the said middle district of Alabama, hereby certify, that the foregoing is a true and complete transcript of the record and proceedings in a certain suit lately determined in said court, wherein Robert Jemison, jun., was plaintiff, and Thomas Townsend was defendant, with all things concerning the same, as appears from the records of the district court aforesaid, now remaining in said clerk's office.

In testimony whereof I hereto put my hand and affix the seal of said district court, at [my] office in the city of Tuscaloosa, this [SEAL.] sixteenth day of August, in the year of our Lord one thousand eight hundred and forty-seven.

A. G. GOOCH,
Clerk D. C., middle district of Alabama.

Filed 24th Dec'r, 1847.